IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

SA.No. 652 of 1994()

AS.205/1992 of DISTRICT COURT, THALASSERY
OS.164/1991 OF THE SUB COURT, THALASSERY
.....

APPELLANTS:RESPONDENTS:DEFENDANTS:
----

1. **STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KANNUR.**

2. **DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **DEPUTY DIRECTOR OF EDUCATION, KANNUR.**

BY GOVERNMENT PLEADER

RESPONDENT:APPELLANT:PLAINTIFF:

V.L.KOCHANNAM,
W/O.T.M.THOMAS,
RETIRED TEACHER, PANANGATH HOUSE,
ANGADIKADAVU P.O., ANGADIKADAVU.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.SASIDHARAN NAMBIAR,J.

S.A.NO. 652 OF 1994

Dated 18th September 2007

J U D G M E N T

Respondent was a teacher in Sacred Heart U.P.School, Angadikadavu, an aided school. She retired voluntarily with effect from 30/4/1990 in accordance with the rules. She submitted application for voluntarily retirement three months in advance on 30/1/1990. Manager, being the appointing authority accorded sanction and forwarded pension papers to third appellant for onward transmission to Accountant General. Third appellant received it on 24/2/1990 and forwarded it to Accountant General from where verification report was received on 26/4/1990. It was communicated thereafter to Assistant Educational Officer, Irritty on 16/5/1990 to obtain and forward pension proposals. Pension book shows that it was submitted only on 30/5/1990 and reached A.E.O on 12/6/1990 and it was forwarded to third appellant the sanctioning authority, who on verification found that remarks of D.E.O was missing and returned it on

18/9/1990 and later it was forwarded on 3/10/1990 and Accountant General sanctioned pensionary benefits which was received by third appellant on 14/11/1990. Last pay certificate and non liability certificate were issued to Sub Treasury, Irritty only on 1/12/1990. Respondent claimed interest for the pension and gratuity due to the delay caused. Appellants contended that delay was not caused by them but by respondent in submitting the pension papers and therefore respondent is not entitled to claim interest.

2. Learned Sub Judge on the evidence of Exts.A1 to A13 dismissed the suit holding that respondent is not entitled to the interest. Respondent challenged the decree before District court, Thalassery in A.S.205 of 1992. Learned Additional District Judge on the undisputed facts found that as per the rules respondent has submitted the proposal for voluntary retirement three months in advance on 30/1/1990 and respondent intimated the date of his retirement as early as on 30/1/1990 and it is within time. Relying on the decision of this court in **State of Kerala v. Padmanabhan Nair (1984 KLT 542**) it was found that delay in disbursing the pensionary benefit cannot be attributed to the latches or

negligence on the part of respondent except for a short period and therefore held that respondent is entitled to interest on pensionary benefit of Rs.1,13,000/- from 1/10/1990 to 1/12/1990 at 10% per annum for the remaining period holding that he is not entitled to claim interest from 30/4/1990 to 30/9/1990. A decree was granted to that effect. Second appeal was filed challenging said decree.

3. Appeal was admitted formulating the following substantial questions of law.

> 1) Whether interpretation given by first appellate court to the provisions of Kerala Service Rules is correct.
> 2) Whether judgment of this court in State of Kerala v. Padmanabhan Nair is applicable to the facts of the case.

4. Learned Government Pleader and learned counsel appearing for respondent were heard.

5. Argument of learned Government Pleader is that though respondent applied for according sanction to voluntary retire with effect from 30/4/1990 on 30/1/990, he submitted pension papers evidenced by Ext.B1 pension book only on 30/5/1990 and therefore delay in

disbursement of the amount is not due to the fault or latches of appellants and therefore respondent is not entitled to claim interest. It was argued that decision of this court in Padmanabhan Nair's case is not applicable and therefore the decree is to be set aside. Learned counsel appearing for respondent argued that in view of the decision of this court in Padmanabhan Nair's case no substantial question of law is available.

6. Pension cannot be termed as a payment by way of compassion. So also gratuity. They are valuable rights available to any government servant when he retires at the end of his service. It is not disputed that in accordance with the relevant rules, respondent submitted application for according sanction to voluntary retirement with effect from 30/4/1990 providing three months advance notice. It is true that pension papers were submitted only on 21/5/1990. But pension papers so submitted was received by third appellant, the sanctioning authority on 12/6/1990. It was not sanctioned because of the failure of D.E.O to offer his remarks. It is not the fault of respondent. Consequently it was returned and thereafter it was forwarded back only on 3/10/1990. First appellate court on appreciating this

fact found that even if there was failure of respondent to submit pension papers till 21/5/1990 and adding a further period of three months provided for voluntary retirement as per rule appellants cannot be made liable to pay interest till 30/9/1990. It was also found that there is no justice for not according sanction for payment of pensionary benefits from 1/10/1990 to 1/12/1990. It was for that reason interest was directed to be paid for that period and at the rate of 10% per annum. As that delay cannot be attributed to respondent, it cannot be said that respondent is not entitled to interest for that period. First appellate court rightly relied on the decision of this court in Padmanabhan Nair's case to award interest. In view of legal position as settled by this court in Padmanabhan Nair's case, substantial questions of law though formulated in the appeal, in fact are not involved on the facts and circumstance of the case. As provided under Section 100(5) of Code of Civil Procedure respondent is entitled to contend at the time of hearing of second appeal that even though substantial question of law is formulated, on the facts of the case it is not involved. On the facts and evidence, no substantial

question of law arises for decision.

Second appeal is dismissed. No cost.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

==========

M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.652 OF 1994

18th September 2007

==========